

Assembly Bill No. 1164

Passed the Assembly September 12, 2007

Chief Clerk of the Assembly

Passed the Senate September 10, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 19.5 (commencing with Section 8430) to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1164, De Leon. Child care: provider organization: representation.

Existing law authorizes employees of public schools to form, join and participate in the activities of an employee organization for the purpose of representation on matters of employer-employee relations, including terms and conditions of employment.

This bill would authorize family child care providers, as defined, to choose whether to be represented by a single provider organization, as defined, that would be designated pursuant to a specified petition and election process. The designated provider organization would be authorized to perform various functions, including operating substitute child care provider pools if those pools are not already being operated or provided in the community, marketing family child care programs, offering business development programs for family child care providers, meeting with state regulatory agencies, and engaging in various types of negotiation with public and private entities that administer state-funded subsidies for child care services. The selection of a negotiating representative would not prevent the designated provider organization or any other organization or individual from appearing before, or making proposals to, the State Department of Education at a public meeting or hearing, or at any other department forum. Provider organizations would be prohibited from calling strikes and from interfering with, intimidating, restraining, coercing, or discriminating against a family child care provider because the family child care provider joins or refuses to join a provider organization. The state, as defined, would also be subject to the latter prohibition.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is necessary to enact legislation to improve access to, and the stability of, quality child care by providing collective activities and other representation rights to family child care providers.

(b) There is a need to improve the quality of child care and to reduce turnover in the industry that is charged with providing safe and quality care for children in California. The industry suffers from low wages and a lack of benefits for child care providers that are causing high turnover among child care providers. High turnover among providers means that many children are not receiving the type of care they require in order to be prepared for, and adapt successfully to, school settings.

(c) (1) The family child care delivery system is fragmented because each provider enters into individual contracts with agencies that administer payments for subsidized child care. This means that family child care providers have little formal or collective input into the delivery of services that can improve the system. Family child care providers have no formal representation rights and are not covered by any law that grants them the right to collective action.

(2) To promote greater efficiency and stability in the child care system, it is necessary to enact legislation that will provide family child care providers with the right to formal representation, to enter into collective negotiations with public and private entities that administer public subsidy payments, and to meet and confer with regulatory agencies to discuss issues of mutual concern.

SEC. 2. Article 19.5 (commencing with Section 8430) is added to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, to read:

Article 19.5. Family Child Care Provider Representation

8430. The purpose of this article is to authorize family child care providers to select a provider organization for the purpose of being represented on all matters specified in this article.

8430.5. It is the intent of the Legislature that the state action exemption to the application of federal and state antitrust laws be

fully available to the extent that the activities of the family child care providers and their representatives are authorized under this article.

8431. In this article, the following terms shall have the following meanings, unless the context requires otherwise:

(a) “Family child care provider” or “provider” means either of the following:

(1) A family child care provider that is licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.

(2) An individual who does both of the following:

(A) Provides child day care in his or her home or in the home of the child receiving care and is exempt from the licensing requirements.

(B) Participates in a subsidy program pursuant to this chapter.

(b) “Negotiating representative” means the provider organization that providers may designate, in accordance with this article, to be the exclusive representative for the providers.

(c) “Provider organization” means an organization to which both of the following apply:

(1) Includes family child care providers.

(2) Has as one of its main purposes the representation of family child care providers to public and private entities in the state.

(d) “Public Employment Relations Board” or “board” means the board established pursuant to Section 3541 of the Government Code.

(e) “Subsidy program” means a state-funded program pursuant to this chapter administered by the State Department of Education or the State Department of Social Services, or both, to assist families in purchasing child care.

8431.5. (a) Family child care providers may form, join, and participate in the activities of provider organizations of their own choice for the purpose of being represented on all matters specified in this article.

(b) A family child care provider may refuse to join or participate in the activities of provider organizations.

(c) Upon the request of a provider organization, the Superintendent and the State Department of Social Services, with the assistance of counties and alternative payment programs, shall collect information regarding family child care providers described in paragraph (2) of subdivision (a) of Section 8431, similar to that

collected by the State Department of Social Services regarding providers described in paragraph (1) of subdivision (a) of Section 8431, and make that information available to the provider organization. The costs of collecting the information, if that information has not been previously collected, shall be borne by the provider organization that requests the data.

(d) A provider organization under this article shall be considered a day care organization for the purposes of subdivisions (b) and (c) of Section 1596.86 of the Health and Safety Code.

8432. (a) Family child care providers may designate, in accordance with this article, the provider organization, if any, to serve as the negotiating representative for the family child care providers.

(b) Only one unit of providers may exist for purposes of this article and that unit shall consist of all family child care providers in the state.

(c) Notwithstanding subdivision (b), a provider organization may petition, in accordance with this article, to serve as the sole negotiating representative of all family child care providers described in paragraph (1) of subdivision (a) of Section 8431, but only if the petition is filed prior to January 1, 2010. The designation of a provider organization as the negotiating representative pursuant to this subdivision shall be terminated upon the designation of a provider organization to serve as the negotiating representative for a statewide unit of all providers or a unit described in subdivision (d).

(d) Notwithstanding subdivision (b), a provider organization may petition, in accordance with this article, to serve as the negotiating representative of all family child care providers, as described in paragraph (1) of subdivision (a) of Section 8431, and all those who provide care in their own homes, and otherwise are described in paragraph (2) of subdivision (a) of Section 8431, but only if the petition is filed prior to January 1, 2012. The designation of a provider organization as the negotiating representative pursuant to this subdivision shall be terminated upon the designation of a provider organization to serve as the negotiating representative for a statewide unit of all providers.

8432.5. (a) If a provider organization petitions the board to serve as the negotiating representative for family child care providers and provides written authorization from a majority of

the total number of providers in the unit as of January 1 of the year in which the petition is made, the board shall designate that provider organization as the negotiating representative for all family child care providers in the specified unit, if all of the following are true:

(1) The provider organization does not request an election under subdivision (d).

(2) No other provider organization petitions within 30 days of the date of the filing of the original petition to serve as the negotiating representative for all family child care providers, as provided in subdivision (b).

(b) If a provider organization petitions the board to serve as the negotiating representative for family child care providers and provides written authorization from at least 30 percent of the total number of providers in the unit as of January 1 of the year in which the petition is made, the petition shall be considered as a request for recognition as representative for all providers in the unit. Upon the filing of the petition with the board, the State Department of Education and the State Department of Social Services shall provide to the board a list of all providers in the unit as of January 1 of the year in which the petition is made. If the unit includes providers described in paragraph (2) of subdivision (a) of Section 8431, and a list of the providers has not been previously prepared, the provider organization, or organizations, that filed the petition shall bear the costs of preparation of the list.

(c) If more than one provider organization petitions to serve as the negotiating representative for all family child care providers in the unit and each petitioning organization has written authorization to serve as the negotiating representative from at least 30 percent of the total number of family child care providers in the unit, as provided in subdivision (b), an election shall be held within 90 days after the day on which the second petition is filed. The providers in the unit shall be offered the opportunity to choose between the following:

(1) One of the provider organizations to serve as the negotiating representative for all family child care providers in the unit.

(2) No representation.

(d) If only one provider organization petitions to serve as the negotiating representative for family child care providers and the organization has written authorization from at least 30 percent of

the total number of family child care providers in the unit, as provided in subdivision (b), the petitioning provider organization may request that an election be held. The election shall be held within 90 days of the filing of the petition. The providers of family child care in the unit shall be offered the opportunity to choose between the following:

- (1) Representation by the provider organization.
- (2) No representation.

(e) (1) Upon receipt of a petition requesting recognition under this section, the board shall do all of the following:

(A) Verify the number of family child care providers who authorized the provider organization to serve as their negotiating representative pursuant to subdivisions (a) to (d), inclusive, as applicable.

(B) Hold elections pursuant to this section, as applicable, and verify the election results.

(2) The board shall establish procedures to ensure the secrecy of a ballot cast in an election held pursuant to this section.

(3) (A) The costs of verifying the number of family child care providers who have authorized the selection of a provider organization shall be paid by the provider organization that submits the petition requesting recognition pursuant to this section.

(B) (i) The costs of the election shall be equally shared by each provider organization placed on the ballot.

(ii) If only one provider organization is placed on the ballot, that provider organization shall pay all of the costs of the election.

(4) (A) Subject to subparagraph (B), in an election held pursuant to this section, the provider organization that receives the greatest number of votes cast shall be designated as the exclusive negotiating representative for all family child care providers in the unit.

(B) A provider organization shall not be designated the exclusive negotiating representative for all family child care providers in the unit if the greatest number of votes cast are for the choice of no representation.

(f) A provider organization that has been designated the negotiating representative for a unit of providers may petition to add another group of providers to that unit if the resulting unit will be a unit described in subdivision (b) or (d) of Section 8432. The board shall designate the provider organization as the negotiating

representative of the new unit upon the completion of any of the following:

(1) The provider organization submits written authorization from a majority of the providers in the group to be added to the existing unit stating that they wish to be included in the existing unit and be represented by the provider organization.

(2) The provider organization submits written authorization from at least 30 percent of the providers in the group to be added to the existing unit stating that they wish to be included in the existing unit and be represented by the provider organization, and the majority of providers in the group to be added vote in an election, conducted by the board in the manner described in this section, to be included in the unit and be represented by the provider organization.

(g) A provider organization, if designated as the negotiating representative for an expanded unit pursuant to subdivision (f), may request to negotiate in accordance with Section 8434.7 on behalf of providers added to a preexisting unit. The terms of a written agreement already in effect pursuant to Section 8434.7 shall not be altered by negotiations pursuant to this subdivision.

8433. (a) (1) Except as provided for in subdivision (c) of Section 8432, the initial designation of a representative pursuant to Section 8432.5 shall be for a period of two years.

(2) After the initial period, the designated provider organization shall continue to be the negotiating representative until another election is held.

(b) (1) An election after the initial period of representation may be held only if all of the following are true:

(A) The initial two-year period has elapsed.

(B) A petition is signed by more than 30 percent of the family child care providers in the unit and provided to the board.

(C) No written agreement entered into pursuant to Section 8434.7 is in effect, or, if such an agreement is in effect, a petition for an election shall be filed only during the period that is less than 120 days, but more than 90 days, before the expiration date of the agreement.

(2) The election shall be held in the same manner as provided in Section 8432.5.

(3) The election shall be held no later than 90 days after the signatures on the petition submitted to the board have been verified

pursuant to subparagraph (A) of paragraph (1) of subdivision (e) of Section 8432.5.

8433.5. (a) A provider organization designated as the representative for family child care providers pursuant to Section 8432.5 shall be the negotiating representative for all providers in the unit for purposes of this article.

(b) A provider organization designated as the negotiating representative shall represent all family child care providers in the unit fairly and without discrimination and without regard to whether the providers are members of the provider organization.

(c) (1) The provider organization designated as the negotiating representative may charge a reasonable fair share service fee to nonmembers for representing them in negotiations, contract administration, and other activities pursuant to subdivision (b). The costs covered by the fair share service fee pursuant to this section may include, but are not limited to, costs associated with contract administration and securing for the represented providers advantages in subsidy rates and training opportunities in addition to those secured through meeting and negotiating with the employer.

(2) The fair share service fee may not exceed the annual dues paid by members of the provider organization.

(3) The negotiating representative may negotiate with the State Department of Education, the State Department of Social Services, or another state agency that administers a program of publicly funded subsidies for child care services for the applicable state agency to deduct the amount of the fair share service fee authorized by this section or membership dues authorized by a provider from subsidy payments owing to the provider and pay those amounts to the negotiating representative. Where the deduction of fair share service fees or membership dues is made by more than one agency, the provider organization shall establish procedures to ensure that the deductions do not exceed the fair share service fees or membership dues owed by an individual provider. If a state agency requires its contractors to assist in the deduction of fair share service fees and membership dues, the negotiating representative shall cooperate with those contractors to facilitate the deductions. The negotiating representative shall provide to any provider that contacts a state agency or its contractor with respect to the

deduction of membership dues or fair share service fees information with regard to the calculation of the dues or fees.

(d) The arrangement described in subdivision (c) may be rescinded by a majority vote of all providers in the unit. If the arrangement described in subdivision (c) is rescinded, a majority of all providers in the unit may request that the arrangement be reinstated. A request for rescission or reinstatement pursuant to this subdivision shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the providers in the unit.

8434. A provider organization shall not call or direct a strike.

8434.5. A provider organization may do any of the following:

(a) Operate substitute family child care provider pools if those pools are not already operated or provided in the community to be served.

(b) Market family child care programs.

(c) Offer business development programs for family child care providers.

8434.6. The State Department of Social Services and other state agencies with responsibility for issuing licenses for family child care providers shall consult at least once a year with the provider organization designated as the representative for family child care providers in order to identify areas of common concern and to improve consistency in the enforcement of regulations affecting the licensing of family child care providers. In addition, upon written request by the provider organization, the State Department of Social Services and other state agencies shall consult with the negotiating representative for the purpose of engaging in joint discussions regarding proposals for revisions to the rules governing licensing of family child care providers.

8434.7. (a) For purposes of this section, the term “negotiate” includes the duty to do the following:

(1) Confer in good faith at all reasonable times.

(2) Memorialize in writing all of the matters agreed upon as a result of negotiations.

(b) (1) Upon the request of the negotiating representative, the State Department of Education, the State Department of Social Services, their contractors, or other state agency that administers a program of publicly funded subsidies for child care services shall negotiate and mutually agree to with the provider organization the

terms of the provision of child care services under a publicly funded subsidy program within the authority of the entity with which the provider organization negotiates. The parties may negotiate the frequency of, and the processes by which they will engage in, ongoing communications. The parties shall not negotiate reimbursement rates until the provisions of paragraph (3) are met.

(2) Upon the request of the provider organization designated as the representative for family child care providers, subject to paragraph (3), the State Department of Social Services, on behalf of the state, shall negotiate with the provider organization with regard to a reimbursement system for providers. An agreement reached with regard to reimbursements shall be subject to appropriation by the Legislature and necessary statutory and regulatory revisions. Notwithstanding subdivision (f) of Section 41202 or any other provision of law, an amount appropriated for purposes of the portion of the negotiated reimbursement amounts that is in excess of statutory reimbursement formulas shall not be considered allocations toward meeting the minimum funding requirements for school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

(3) Negotiations for a first agreement with a provider organization pursuant to this subdivision shall not include reimbursement rates in publicly funded subsidy programs. Negotiations for subsequent agreements are within the exclusive jurisdiction of the State Department of Social Services, acting on behalf of the state, and may include reimbursement rates in publicly funded subsidy programs.

(c) An agreement pursuant to this section may provide for binding arbitration of grievances.

(d) This section does not authorize negotiations regarding parent fee levels.

(e) Nothing in this section shall be construed to require a contractor to negotiate matters for which he or she does not have authority to control.

8435. The designation pursuant to this article of a provider organization as the representative for family child care providers does not prohibit the provider organization, or any other organization or individual, from appearing before, or making proposals to, the State Department of Education at a public meeting or hearing, or at any other department forum.

8435.5. (a) The state or provider organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against a family child care provider because the family child care provider joins or refuses to join a provider organization. A family child care provider may present any claim of violation of this subdivision as a complaint under the uniform complaint procedure of the State Department of Education.

(b) For purposes of this section, “state” means any of the following:

(1) An agency, board, commission, department, office, or public benefit corporation of the state.

(2) An employee of the state.

(3) A contractor or subcontractor of the state.

8436. Family child care providers shall be deemed to be self-employed for purposes of this article, and shall not be deemed to be employees of the state for any purpose.

Approved _____, 2007

Governor